BOARD OF APPEALS CASE NO. 5141 * BEFORE THE

APPLICANTS: William & May Rogers * ZONING HEARING EXAMINER

REQUEST: Variance to allow existing swimming * OF HARFORD COUNTY pool and proposed shed within the required front

yard setback; 820 Ferguson Road, Joppa * Hearing Advertised Aegis: 6/13/01 & 6/20/01

HEARING DATE: August 8, 2001 * Record: 6/15/01 & 6/22/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, May and William Rogers are requesting a variance pursuant to Harford County Ordinance 6, Section 6.08 to allow an existing pool and proposed shed within the required 25 foot front yard setback (existing 10 feet for the pool and 9 feet for the proposed shed) in an R3/CDP District.

The subject parcel is located at 820 Ferguson Road, Joppa, Maryland 21085 and is more particularly identified on Tax map 65, Grid 4A, Parcel 744, The parcel consists of 0.262± acres, is presently zoned R3/CDP and is entirely within the First Election District.

The Applicant, William Rogers appeared and testified that he has owned the subject property for 7 years. He lives on the property with his wife and children. He installed the existing above ground pool 4 years ago and thought that the contractor that completed the installation had obtained all necessary permits. The pool is 30 feet by 15 feet in dimension, is uniformly 4 feet deep and has no diving boards. His property is slightly elevated compared to his neighbors' properties and to the rear, his property appears to be on a slight rise. His lot is a corner lot and even though the pool and proposed shed are clearly located to the rear of the house, the corner lot configuration results in the unique dual front yard setback requirement. The Applicant proposes to construct a shed on the road side of the pool which will be used to store pool and patio equipment and furniture. The Applicant admitted that he really did not need this shed, it would simply be an added convenience for him and his family.

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The Applicant stated that there are a number of similar pools in the neighborhood. and concluded by stating that he would lose \$7000, the cost of the pool and installation and his children would be deprived of an activity that they use all summer if this request were denied. The witness, by referring to the plat of his property pointed out that there was no other practical location for the pool or shed on the property.

Mr. Anthony McClune appeared as representative of the Department of Planning and Zoning. Mr. McClune stated that the Department recommends denial of the Applicant's request. The witness testified that this is an older, established neighborhood with fairly uniform streetscape. There are no other front yard improvements in the neighborhood. In Mr. McClune's opinion, the existence of a pool and shed within the front yard would be inconsistent and incompatible with the rest of the neighborhood.

CONCLUSION:

The Applicants are seeking a variance pursuant to Harford County Ordinance 6, Section 6.08 to locate a shed and pool within the 25 foot minimum front yard setback in an R3/CDP district (10 feet for pool and 9 feet for shed).

Variances of this nature may be granted, pursuant to Section 267-11, which provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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In the instant case, the Applicant has demonstrated that his property is unique. It is a corner lot and is subject to two front yard setbacks unlike other non-corner properties. Corner configurations always pose challenges to setback requirements whenever outside improvements like decks, sheds, pools and garages are proposed on the parcel. However, pools are common place in this neighborhood and even Mr. McClune admitted that there are any number of pools in this neighborhood, many visible from the street. It would work a hardship on this Applicant to have to remove the pool both financially and in depriving the property owner of rights commonly enjoyed by other neighboring property owners, particularly if the use can be accommodated in such a manner as to minimize or eliminate adverse impacts to adjoining and nearby properties. Based on the plat presented by the Applicant, elimination of the shed request coupled with the planting of evergreen and other forestation serving as screening would eliminate the visual impacts associated with the pool and would serve as additional noise barrier. The pool in and of itself has no adverse impacts associated with it other than the visual impact along what Mr. McClune described as a uniform streetscape. Plantings can eliminate that impact as to the pool but the Hearing Examiner agrees with the Department that a shed placed at the proposed location would be incompatible with other properties in the neighborhood. The proposed shed would be an eyesore and screening alone could not eliminate this impact.

The Hearing Examiner, therefore, finds that the property is unique and that hardship would result if the Applicant were required to remove the pool. No hardship, however, results in the Applicant's inability to construct a shed in the front yard. By the Applicant's own admission, he does not need the shed. Since it will represent an incompatibility and thus an adverse impact not resulting from the unique topography of the parcel, the Hearing Examiner recommends denial of the request for variance related to the shed.

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There is no other location on the property for the pool and screening can eliminate

adverse visual impacts; therefore, as to the existing pool, the Hearing Examiner

recommends approval subject to the following conditions:

1. The Applicant prepare a landscaping plan consisting of evergreen and other

forested screening that will serve to mitigate the visual impact of the pool

location. This landscaping plan shall be submitted for review and approval by

the Department of Planning and Zoning. Plantings shall be made within 60 days

of this decision becoming final.

2. The Applicant shall obtain any and all necessary permits for the pool.

Date SEPTEMBER 10, 2001

William F. Casey Zoning Hearing Examiner

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